IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 682 OF 1987

The Commissioner of Income-tax,
Bombay City-III, Bombay. ...Applicant
V/s.
M/s.Deluxe Pictures(Delhi). ...Respondent

Mr.Ashok Kotangle, Sr.Counsel for Applicant.
Mr.A.P. Sathe for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 5, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal at the instance of the revenue has referred the following question arising out of the order passed for the assessment year 1977-78 for the opinion of this Court :-

> "1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that Rule 9B of the Income-Tax Rules, 1962 will not be applicable to those cases where according to the

method of accounting regularly employed by the assessee and accepted by the department in the past, the entire cost of acquisition or the minimum guarantee of the distribution or exhibition rights of the picture were claimed and allowed as a deduction year after year in the year of release of the picture and consequently the assessee-firm was entitled to the claim of deduction of the entire minimum guarantee of Rs.18 lakhs for acquiring the distribution rights of the picture, Iman Dharam, instead of the claim of deduction being limited to the collections from the picture for this year, i.e. Rs.4,32,985/- only in working out the Business Income."

. The learned Counsel for the Revenue during the course of hearing has brought to our notice Rule 9(b)(7), which reads as under :-

"Nothing contained in this rule shall apply in relation to any assessment year commencing

before the 1st day of April, 1987."

. The question referred to us for our opinion is concerned, it centres around the assessment year 1977-78 the previous year of which ended on 31st March, 1977. The picture in question was released on 24th March, 1977. Considering the relevant dates, the question sought to be referred based on the text of Section 9(b) can not arise in view of the non-applicability of the said rule for the assessment year commencing before 1st day of April, 1977.

. In this view of the matter, the question referred for our opinion does not arise from the order of the Tribunal as such it needs no adjudication at the hands of this Court. Reference is returned back to the Tribunal with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**